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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \*

THEODORE STEVENS,  
  
                                Plaintiff,  
  
          v.  
  
HONEY WICKHAM, et al.,  
  
                                Defendants.

Case No. 2:17-cv-01949-JAD-CWH

**ORDER AND REPORT AND  
RECOMMENDATION**

Presently before the court is plaintiff Theodore Stevens’ application to proceed *in forma pauperis* (ECF No. 1), filed on July 17, 2017.

Also before the court is plaintiff’s motion to rescind settlement (ECF No. 15), filed on November 6, 2018.

Also before the court is defendants James Dzurenda, J Graham, and Brian Williams’ motion to enforce settlement (ECF No. 16), filed on November 20, 2018.

Also before the court is plaintiff’s motion to extend time (ECF No. 17), filed on November 28, 2018.

Also before the court is plaintiff’s motion for order to return illegally seized money (ECF No. 19), filed on December 5, 2018. Defendants filed a response (ECF No. 21) on December 19, 2018. Plaintiff filed a reply (ECF No. 22) on December 21, 2018.

Also before the court is plaintiff’s motion for leave to file (ECF No. 23), filed January 9, 2019.

Also before the court is plaintiff’s motion to withdraw (ECF No. 25), filed on January 25, 2019.

Also before the court is plaintiff’s motion to extend time (ECF No. 34), filed on June 20, 2019.

1 Also before the court is defendant's second motion to enforce settlement (ECF No. 38),  
2 filed on July 8, 2019.

3 **I. BACKGROUND**

4 This is a pro se prisoner civil rights action under 42 U.S.C. § 1983. Plaintiff alleges that  
5 defendants retaliated against him for filing grievances and lawsuits. (Compl. (ECF No. 4).) The  
6 court entered a screening order permitting some claims to proceed, dismissing some claims with  
7 prejudice, dismissing other claims with leave to amend, and deferring a decision on plaintiff's  
8 application to proceed *in forma pauperis*. (Screening order (ECF No. 3).) Following plaintiff's  
9 deadline to amend the complaint, the court referred the action to the court's Inmate Early  
10 Mediation Program and stayed the case for 90 days. (Order (ECF No. 5).)

11 The mediation was held on October 19, 2018 before Mediator David A. Stephens. (Mins.  
12 of Proceedings (ECF No. 10).) Plaintiff and defendants' representatives attended the conference.  
13 (*Id.*) A settlement was reached, and the essential terms of the settlement agreement were read  
14 into the record. (*Id.*) The essential terms of the agreement were that NDOC agreed to remove  
15 \$247.33 of Stevens' debt owed to NDOC and that NDOC will provide plaintiff with an  
16 appointment with a medical professional to evaluate whether plaintiff has a need for an air  
17 mattress. (*Id.*)

18 In light of the settlement, the court stayed the case for an additional 60 days to allow the  
19 parties to finalize the terms of their settlement agreement. (Order (ECF No. 13).) Plaintiff then  
20 moved to rescind the settlement agreement on the basis of buyer's remorse. (Mot. to Rescind  
21 (ECF No. 15).) Defendant responded by filing a motion to enforce the settlement agreement,  
22 arguing that the agreement reached during the mediation was valid and binding. (Mot. to Enforce  
23 (ECF No. 16).)

24 Plaintiff also moves the court to extend the deadline for him to respond to the motion to  
25 enforce, as he is compiling facts to add to his retaliation claims. (Mot. to Extend (ECF No. 17).)  
26 Plaintiff also moves for the return of money that was allegedly seized from his inmate account.  
27 (Mot. to Return (ECF No. 19).) Defendants respond to the allegations of illegally seized money,  
28 arguing that the motion is unrelated to the underlying action. (Resp. (ECF No. 21).)

1 Plaintiff also moves for leave to file a supplement. (Mot. for Leave (ECF No. 23).)  
2 However, plaintiff also moves to withdraw the motion, arguing that Bartel is not a proper  
3 defendant. (Mot. to Withdraw (ECF No. 25).)

4 Between March of 2019 until July of 2019, defendants submitted four status reports  
5 regarding the status of settlement. (*See* Status Report (ECF Nos. 27, 29, 31, 37).) In defendants'  
6 initial status report, defendants stated that they mailed a proposed settlement agreement and a  
7 proposed stipulated dismissal for plaintiff to execute, and that plaintiff had not executed either  
8 document. (ECF No. 27.) In defendants' subsequent status report, defendants stated that plaintiff  
9 informed defense counsel that he could not agree to the proposed settlement agreement. (ECF  
10 No. 29.) In their third status report, defendants stated that plaintiff added the following term to  
11 the proposed settlement agreement: "[i]f NDOC . . . serves Stevens bologna, while Stevens is on  
12 low sodium [diet], Stevens retains the right to refile suit." (ECF No. 31.) According to  
13 defendants' letter to plaintiff, they are unable to agree to the clause because it is the primary issue  
14 in *Stevens v. Duane Wilson*, et al., No. 2:17-cv-02373-RFB-NJK. (*Id.* at Ex. A.) In the final  
15 report, defendants contend that they are unable to reach an agreement as to the form and content  
16 of the settlement agreement, and that another motion to enforce the settlement agreement would  
17 be forthcoming. (ECF No. 37.)

18 Defendants have now filed another motion to enforce the settlement agreement. (Mot. to  
19 Enforce (ECF No. 38).) In this new motion to enforce, defendants move to enforce the settlement  
20 agreement reached during the Inmate Early Mediation in *Stevens v. Duane Wilson*, et al., No.  
21 2:17-cv-02373-RFB-NJK. (*Id.*) Defendants argue that during the Inmate Early Mediation in  
22 *Stevens v. Duane Wilson*, a settlement was reached and that the terms of that agreement included  
23 plaintiff withdrawing his motion to rescind in this action and filing a stipulated dismissal. (*Id.*)  
24 This motion is not yet ripe, and plaintiff has yet to respond.

## 25 **II. FIRST MOTION TO ENFORCE AND MOTION TO RESCIND**

26 The court has inherent authority to enforce settlement agreements between parties in  
27 pending litigation. *See In re City of Equities Anaheim, Ltd.*, 22 F.3d 954, 957 (9th Cir. 1994);  
28 *Callie v. Near*, 829 F.2d 888, 890 (9th Cir. 1987). This enforcement power extends to oral

1 agreements. *See Doi v. Halekulani Corp.*, 276 F.3d 1131, 1138-39 (9th Cir. 2002). The court  
2 may not enforce a settlement agreement where the material facts are disputed. *In re City of*  
3 *Equities Anahiem*, 22 F.3d at 958.

4 Here, plaintiff moves to rescind the settlement agreement reached during the Inmate Early  
5 Mediation in this case. Plaintiff argues that he is experiencing buyer's remorse. Plaintiff also  
6 expresses concern that he is not guaranteed an air mattress and argues that the parties did not  
7 reach an agreement on the "Graham issue."<sup>1</sup> In turn, defendants move to enforce the settlement  
8 agreement reached in this case, arguing that the agreement reached in this action is binding and  
9 that plaintiff's buyer's remorse is an insufficient basis to relieve him from his contractual  
10 obligation.

11 Having reviewed the motions and the parties' arguments, the court will grant defendants'  
12 first motion to enforce. The record reflects that plaintiff orally agreed to dismiss this action in  
13 exchange for institutional debt forgiveness in the amount of \$247.33 and a medical evaluation to  
14 determine the necessity of an air mattress. (Mins. of Proceedings (ECF No. 10).) The material  
15 facts remain undisputed, but plaintiff expresses displeasure with the terms of the agreement.  
16 Plaintiff's buyer's remorse does not provide the court with a legal basis to rescind the terms of the  
17 settlement agreement. As for the Graham issue, plaintiff had the opportunity to negotiate  
18 settlement terms and then incorporate those terms into the record. However, plaintiff did not do  
19 so. Therefore, the court grants the first motion to enforce and denies the motion to rescind.  
20 Given that the court has granted the motion to enforce, the court recommends that the District  
21 Judge dismiss this case.

### 22 **III. SECOND MOTION TO ENFORCE**

23 Defendants also move to enforce the settlement agreement reached in *Stevens v. Duane*  
24 *Wilson*. Defendants argue that as a part of the settlement agreement in *Stevens v. Duane Wilson*,  
25 plaintiff agreed to withdraw his motion to rescind in the current action and to dismiss the current  
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27 <sup>1</sup> Plaintiff does not elaborate on the meaning of the Graham issue. The court presumes that the Graham  
28 issue relates to defendant J Graham, as Graham is his surname.

1 action with prejudice. This motion is now moot, as the court has denied the motion to rescind and  
2 recommended that this action be dismissed. Therefore, the second motion to enforce is denied as  
3 moot.

#### 4 **IV. REMAINING MOTIONS**

5 Given that the court has enforced the settlement agreement, the remaining motions are  
6 denied as moot.

#### 7 **V. CONCLUSION AND RECOMMENDATION**

8 IT IS THEREFORE ORDERED that plaintiff's application to proceed *in forma pauperis*  
9 (ECF No. 1) is DENIED as moot.

10 IT IS FURTHER ORDERED that plaintiff's motion to rescind (ECF No. 15) is DENIED.

11 IT IS FURTHER ORDERED that defendants' motion to enforce (ECF No. 16) is  
12 GRANTED.

13 IT IS FURTHER ORDERED that plaintiff's motion to extend (ECF No. 17) is DENIED  
14 as moot.

15 IT IS FURTHER ORDERED that plaintiff's motion to return illegally seized money (ECF  
16 No. 19) is DENIED as moot.

17 IT IS FURTHER ORDERED that plaintiff's motion for leave (ECF No. 23) is DENIED  
18 as moot.

19 IT IS FURTHER ORDERED that plaintiff's motion to withdraw (ECF No. 25) is  
20 DENIED as moot.

21 IT IS FURTHER ORDERED that plaintiff's second motion to extend (ECF No. 34) is  
22 DENIED as moot.

23 IT IS FURTHER ORDERED that defendants' second motion to enforce is DENIED as  
24 moot.

25 IT FURTHER RECOMMENDED that this case be DISMISSED.


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DATED: July 11, 2019

  
C.W. HOFFMAN, JR.  
UNITED STATES MAGISTRATE JUDGE